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TELECOMMUNICATION REGULATIONS

THE BELGIAN CASE

Paper presented at the I.T.S. Conference

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Defolure 87

Four topics have been studied by the C.R.I.D. :

- the recent modifications of the Radio and Television status ;
- the "Wise Men" report on the future telecommunications regulation ;
- the present provisions of value added services network in Belgium ;
- a brief summary of the trends of the pre-bill about the terminals' equipment.

RADIO AND TELEVISION IN BELGIUM

The 1971 revision of belgian constitution has given full competence as regards cultural matters to the Cultural Communities and Radio and Television Broadcasting was specifically included in such matters by the Central State law of july 21st 1971.

This was later confirmed by the Special Law on the Reform of the Institutions of August 8th 1980 which described in detail the competence vested to the Communities in this respect.

Medias fall within the cultural sphere and the Special Law has accordingly transferred to these Communities the authority previously held by the Central State, with the exception however of commercial advertising and government messages which remain ruled by the Central State. These messages had on february 18th 1977 already be dealt with by a law that gave to the King authority to determine how the central government could exercise his prerogative. This law was followed by the King's Order of June 8th 1982 which gave to the Prime Minister the right to choose the date and hour at which such messages should be broadcasted.

The competence such transferred to the Cultural Communities was put into practice by :

- a decree of December 12th 1977 voted by the French Speaking Community on the statutes of the "Radio et Television Belge de langue Française"(RTBF)

- a similar decree voted on December 28th 1979 by the Flemish Speaking Community for the "Belgische Radio en Televisie - Nederlandse Uitzendingen" (BRT)

- and finally a decree taken in June 27th 1986 by the German Speaking Community for the Belgisches Rundfunk und Fernsehzentrum für deutschsprachige Sendungen (BRF) instituted by the law of February 18th 1977.

The National law of February 6th 1987 and the decree of July 17th 1987 by the French Speaking Community have further legislated on these matters and we shall now expound on these two important documents.

THE NATIONAL LAW OF FEBRUARY 6TH 1987 AND THE DECREE BY THE

EXECUTIVE OF THE FRENCH SPEAKING COMMUNITY OF JULY 17th 1987

These two recent legislations set the framework within which Radio and Television companies will be allowed to operate in future in the french speaking part of the country.

They contain several innovative issues :

1. COMMERCIAL ADVERTISING AND LIBERALIZATION OF RTBF MONOPOLY

The RTBF monopoly, originally instituted by the law of the Central State of May 18th 1960, is now definitely over.

In fact in the course of the years this monopoly was gradually reduced as a result of various decisions taken both by the Central State and by the French Speaking Cultural Community.

Already on August 29th 1981 a King's Order had put an end to the RTBF monopoly by acknowledging local wireless stations. On June 5th 1985 the Central Government further authorized these stations to broadcast commercial advertising and, in exchange, authorized the RTBF to seek sponsors for their programs (with the exception of news) .

The new law of February 6th 1987 now entitles Television companies also to distribute commercial advertisements, which was formerly forbidden by the King's Order of December 24th 1966 . The law converted the absolute prohibition of commercial advertising, which was the rule, both at radio and television, into a general acceptance at the condition that certain principles concerning the form and the content were observed. The same law also provides that only one single commercial company can be licenced in each community to distribute commercial advertising television programs.

The French Speaking Community has on his part also taken decrees limiting the RTBF monopoly. On September 8th 1981 a decree authorized local private wireless stations and on July 8th 1983 pay cable television services were acknowledged.

The underlying philosophy of the new decree of July 17th 1987 is that competition and plurality are the best guarantee for the objectivity of the information. It envisages the constitution of local TV stations, regional private TV stations, private TV stations for the French Speaking Community and private radio stations. Such private companies are allowed to broadcast sound and television programs in the french speaking part of the country, subject to an authorization by the Executive and provided that certain specific conditions are met about their functioning, the content of the programs and their financing.

2. CABLE RADIO AND TELEVISION

So far this matter was ruled by the King's Order of December 24th 1966 but as soon as 1976 a few TV stations were authorized, by derogation, to emit locally, on an experimental basis, in the french speaking part of the country. Furthermore, by a decree taken on July 5th 1985 the executive was even authorized to subsidize these stations.

The national law of February 6th 1987 and the Community decree of July 17th 1987 now settle the matter for good.

In future the establishment and the management of a cable Radio and Television network will be submitted to two authorizations, one delivered by the relevant Ministry of the Central State concerning the technical aspects and the other by the Executive of the French Speaking Community relative to the content of the service itself.

Cable distributors are obliged to transmit RTBF programs and any other officially recognized radio and television channels. As for the official programs of the other Communities, they must be distributed only if reciprocity is allowed for.

All other channels can freely be transmitted provided that the distributor has obtained beforehand a written authorization by the Executive of the French Speaking Community.

3. OTHER SERVICES BY CABLE

The law of february 6th 1987 provides that a King's Order could determine the conditions at which other services than sound and image could be offered by cable distributors. Similarly the decree of July 17th 1987 also prescribes that such services could be authorized.

This concerns technical interventions to monitor at distance the network and the connection or disconnection of subscribers but also, possibly, cable interactive services, with the exception however of mailing which remains of the exclusive resort of the "Régie des Télégraphe et Téléphone" (RTT).

4 NON COMMERCIAL ADVERTISING AND SPONSORING

Non commercial advertising is the only form of publicity which is recognized as within the competence of the Cultural Communities and several rulings of the decree concern this matter. The RTBF is now officially allowed to broadcast such messages.

As for sponsoring, both private companies and the RTBF are allowed to broadcast programs that are sponsored by commercial interests. This is however not applicable to news programs. In any case strict rules governing the indication of the name of the sponsor have to be adhered to.

Non commercial advertising will be controlled by a commission especially created for this purpose.

5. PAY TELEVISION

Both the RTBF and private broadcasting companies are allowed to emit pay TV programs that can only be viewed by using a code.

An Advisory Board made up of 30 members representing the various interests involved has been instituted to help the Executive of the French Speaking Community in these matters.

THE "WISE MEN" COMMISSION

In July 1986, the Secretary of State in charge of PTT instituted a so-called Wise Men Commission in order to elaborate guiding principles for a future Telecom policy in Belgium. The final report, published on October 28th 1986, raised numerous questions and its recommendations, if approved, will alter significantly the very structure of the Telecom sector in Belgium.

Five main issues were raised

1. The Monopoly of the RTT

It is recommended that the RTT keeps its monopoly only for the basic structural framework such as the basic infrastructure, the connection to the user and the peripheral transmission and communication installations including satellite earth stations and international networking. All terminals, including Modems, should, according to the Commission, be liberalized within the next five years in order to allow to deplete RTT existing stocks and recycle redundant staff. A controlling body, as yet undefined, should be set in order to avoid unfair competition from the RTT which is allowed to compete with the private sector.

2. Standards

The responsibility of setting the standards would in future be severed from RTT responsibility and allocated to a new independent body called NAT (Standards and Authorizations in Telecom).

This institution would be integrated within a ministry but the responsibility of testing the technical conformity of equipment would still be entrusted to RTT laboratories, at least in a preliminary stage.

3. Procurement

Present rules governing public procurement would no longer be applicable for the purchase of terminals. The RTT would thus be forced to compete on the market with the private sector.

4. Tariff Setting

Tariff policy, both national and international, would be under the exclusive authority of the RTT but subject to price control by the Ministry.

5. RTT Statute

It is recommended by the commission that government control over RTT activity is considerably reduced in order to enable them to react promptly to commercial and/or industrial contingencies. To achieve this aim the "wise men" put forward the proposal to transform in the first place the RTT into a limited liability company and afterwards to sell part of the shares on the market, the public sector keeping however the majority.

This objective would only be attainable on the longer term and it is recommended that in the mean time the RTT takes the form of a special independent State Company with a statute of its own. During this transitory period a governing board and a Telecom advisory council would be instituted. RTT activities would still be controlled by a governmental authority but it is suggested that the supervision should be restricted to essential matters.

The provision of value-added networks in Belgium

SYNOPSIS

1. The Current Situation

As a general rule, Art. 1 of the Law of October 13, 1930 provides that the establishment and operation of telecommunications networks in Belgium is the legal monopoly of the Regie des Telegraphes et Telephones (the Belgian public telecommunications authority, hereafter referred to as the "RTT").

Art. 1 of the Law of October 13, 1930 reads:

"The RTT has the exclusive right to establish and operate telegraph and telephone lines and offices for public correspondence. It can authorize third parties to cooperate to such operation pursuant to specific agreements"

Art. 15, 86 and 151 of the Ministerial Decree of September 20, 1978 prohibit the shared use or the resale of telecommunications facilities, respectively with regard to telephone and telex networks, the use of leased lines and the public packet switching network known as "DCS", without the permission of the RTT.

Consequently, the provision of VANS in Belgium currently falls within the monopoly of the RTT and is therefore subject to permission from the latter. Such permission is given on an individual basis and there is currently no class-type license in Belgium. Permissions have been notably granted to SITA, SWIFT, GEISCO, IBM, Reuters and EARN.

Finally it should be noted that the shared use of telecommunications facilities for the transmission of messages between users belonging to the same legal entity is, in principle, not prohibited.

2. Regulatory Trends

The Belgian Government is currently examining the recommendations of a special commission (the so-called "Wise Men Commission") on telecommunications which was appointed by and reported to the Secretary of State for Telegraph and Telephone in 1986.

With regard to VANS, the Commission's report recommended the liberalization of value-added services provided that usage-based sensitive tariffs are introduced for the shared use of telecommunications facilities.

BILL RELATING TO TELECOMMUNICATIONS TERMINAL EQUIPMENT, TO
REGULATION AND LICENCING IN MATTERS OF TELECOMMUNICATIONS

Warning

The bill treated is a proposal of law, not yet voted by the Belgian Parliament and being the object of discussions. Therefore, changements are still possible.

Purposes of the bill

Liberalization of the telecommunications terminal equipment market, so that the private sector could compete on equal footing with the RTT for delivering, installation and maintenance of terminal equipment. This, preserving the quality of telecommunications services, the functioning of the network and the security of users.

Contents of the bill

1. Definitions

For a greater part of the terms, the bill uses the definition made by the EEC Council Directive of 24th July 1986 on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment. In this view "terminal equipment means equipment directly or indirectly connected to the termination of a public telecommunications network", in Belgium, it is the telecommunications network run by the RTT ("Régie des Téléphones et Télégraphes).

2. Liberalization of the telecommunications terminal equipment market

By changing the law of 13 October 1930 ruling telegraphe and cable-telephone, approved firms with their approved telecommunications terminal equipment could in future be in competition to the RTT. The "Régie" however remains on the market for termial equipments and it is even anticipated that the RTT could furthermore extent its activities to the services related to these terminal equipments.

3. Creation of a "bureau for regulation and authorization in telecommunications matters" by the Ministry of communications

As the RTT operates itself on the telecommunications terminal equipment market, the "Régie" shouldn't have exclusive authority to regulate in telecommunications matters any more. This, in order to assure conditions of perfect competition. The responsibility to set up norms and standards will in future be taken by a new bureau. This body will be independant but nevertheless working in close collaboration with the RTT and all decisions taken by the "Regie" untill the bureau's begin of operation remains valid.

Among the competences of this bureau are :

- Determination of technical specifications, of type approval specifications, of rules to be observed when connecting and using telecommunications terminal equipments, of conditions for approving retailers and installers others than the RTT ;
- Granting and withdrawal of certificates of conformity, as well as of terminal equipment type (approval), of testing laboratory (approval) and of retailers and installers approval ;
- Controle of the good respect of the prescriptions set out by the bureau. Controle for which the civil servants in charge will receive a special police authority ("officiers de la police judiciaire") ;
- Representation of Belgium by the EEC Commission as the official body entitled to approve telecommunications terminal equipment ;
- Regulation and administrative tasks related to radiocommunications (law of 30 July 1979) and cable radio and television as well as advertising (law of 6th February 1987). These tasks will be carried out instead of the RTT.

4. Rules in order to warrant the general adherence to the approval in general and particularly its conditions for distribution, connection and utilization of telecommunications terminal equipments. The bill also provides the penalties in case of infringements to the provisions of the bill and the rulings set out by the bureau in accomplishment of its tasks.